

1 Adopt 2 Cal. Code Regs. section 18707.5 as follows:

2 **§ 18707.5. Sources of Income to Owners of Retail Business Entities.**

3 (a) Significant Segment Test

4 ~~(a)(1)~~ For purposes of Government Code section 87103.5(a), as to a business
5 entity located in a jurisdiction with a population of more than 10,000 or which is
6 located in a county with more than 350 retail businesses, the retail customers ~~of a~~
7 ~~business entity~~ constitute a significant segment of the public generally if either of the
8 following ~~is true:~~ applies:

9 ~~(1)(A)~~ (A) The retail customers of the business entity during the preceding 12
10 months are sufficient in number to equal 10 percent or more of the population or
11 households of the jurisdiction; or

12 ~~(2)(B)~~ (B) The retail customers of the business entity during the preceding 12
13 months number at least ~~ten thousand~~ 10,000.

14 (2) For purposes of Government Code section 87103.5(b), as to a business
15 entity located in a jurisdiction with a population of 10,000 or less which is located in
16 a county with 350 or fewer retail businesses, the retail customers constitute a
17 significant segment of the public generally if the retail customers of the business
18 entity during the preceding 12 months are sufficient in number to equal 10 percent or
19 more of the population or households of the jurisdiction.

20 (3) For purposes of this subdivision, a customer of a retail business entity is
21 each separate and distinct purchaser of goods or services, whether an individual,
22 household, business or other entity. If records are not maintained by customer name,
23 a good faith estimate shall be made to determine what percentage of sales transactions

1 represent multiple transactions by repeat customers. The total number of sales
2 transactions shall then be reduced by the estimated percentage of repeat customers to
3 yield the number of customers for purposes of applying this subdivision.

4 (b) Indistinguishable Income Test

5 ~~(b)(1)~~ For purposes of Government Code section 87103.5(a), as to a business
6 entity located in a jurisdiction with a population of more than 10,000 or which is
7 located in a county with more than 350 retail businesses, the amount of income
8 received ~~by a business entity~~ from a retail customer is not distinguishable from the
9 amount of income received from its other retail customers if the amount spent by the
10 customer in question ~~during the preceding 12 months is less than one-tenth of 1~~
11 ~~percent of the gross sales revenues of the retail business entity for the preceding fiscal~~
12 ~~year.~~ is less than one-tenth of one percent of the gross sales revenues that the
13 business entity earned during the 12 months prior to the time the decision is made.

14 (2) For purposes of Government Code section 87103.5(b), as to a business
15 entity located in a jurisdiction with a population of 10,000 or less which is located in
16 a county with 350 or fewer retail businesses, the amount of income received from a
17 retail customer is not distinguishable from the amount of income received from its
18 other retail customers if the amount spent by the customer in question does not
19 exceed one percent of the gross sales revenues that the business entity earned during
20 the 12 months prior to the time the decision is made.

21 (c) For purposes of Government Code section 87100, an official who owns 10
22 percent or more of a retail business entity, ~~which meets whose retail customers meet~~
23 the criteria in either subdivision (a)(1)(A), ~~or (a)(2)(1)(B) or (a)(2),~~ does not "have

1 reason to know" that a decision will affect a source of income to the retail business
2 entity when either of the following applies:

3 (1) If all of the following are true:

4 (A) The customer does not have a charge account or open book account with
5 the retail business;

6 (B) The retail business does not maintain records for noncharge customer
7 transactions by customer name or other method for tracking transactions which would
8 provide the customer name; and

9 (C) The fact that the person is a customer is not personally known to the
10 official; or

11 (2) If all of the following are true:

12 (A) The accounts and books of the retail business entity are maintained by
13 someone other than the official or a member of the official's immediate family; and

14 (B) The fact that the person is a customer is not personally known to the
15 official.

16 (d) For purposes of subdivision (c), a credit card transaction utilizing a credit
17 card not issued by the retail business entity is considered a "noncharge customer
18 transaction."

19 (e) Subdivision (c) shall not be utilized in determining whether an official
20 "knows" of a financial interest in a decision within the meaning of Government Code
21 section 87100. When such knowledge exists, or the fact that a person is a source of
22 income is brought to the attention of the official prior to the governmental decision,

1 the provisions of subdivision (c) shall have no effect on the official's duty to
2 disqualify.

3 NOTE: Authority cited: Section 83112, Government Code.

4 Reference: Sections 87103 and 87103.5, Government Code.

5 I:\REGULATIONS\Agenda Regs. 2003 (Dec. 03)18707-5.doc